MOHAMAD IQBAL RAHMAN & ANOR

v.

KETUA PENGARAH IMIGRESEN & ORS

HIGH COURT MALAYA, KUALA LUMPUR
WAN AFRAH IBRAHIM JC
[APPLICATION NO: R2-25-179-03]
7 SEPTEMBER 2004

ADMINISTRATIVE LAW: *Exercise of judicial functions - Judicial review - Home Minister and D-G of Immigration declared applicant an 'undesirable' and 'prohibited' immigrant - Applicant applying for certiorari to quash such declaration - Applicant subsequently deported - Whether court should proceed to hear application - Function of judicial review, certiorari proceedings and declaratory relief - Scope of O. 53 Rules of the High Court 1980*

ADMINISTRATIVE LAW: *Remedies - Certiorari - Application for - Judicial review - Home Minister and D-G of Immigration declared applicant an 'undesirable' and 'prohibited' immigrant - Applicant applying for certiorari to quash such declaration - Applicant subsequently deported - Whether court should proceed to hear application - Function of judicial review, certiorari proceedings and declaratory relief - Scope of O. 53 Rules of the High Court 1980*

This was an application by the 1st and 2nd applicants under O. 53 Rules of the High Court 1980 ('RHC') for an order of *certiorari* to quash the following declarations made by the Minister of Home Affairs ('the Minister') and the Director General of Immigration ('the D-G') respectively, namely: (i) that the 1st applicant is an 'undesirable immigrant' under s. 8(3)(k) of the Immigration Act 1959/1963 ('the Act'); and (ii) that the 1st applicant is a 'prohibited immigrant' under s. 14(4)(b) of the Act and therefore his presence in Malaysia is unlawful. The declarations were made on 31 January 2003 and 18 August 2003 respectively, and the 1st applicant was deported to Indonesia on 14 May 2004. Leave of court to proceed with the application was granted on 11 November 2003. (The 1st applicant is a citizen of Indonesia and a permanent resident of Malaysia whilst the 2nd applicant is/was his wife. The 1st applicant had earlier been detained under s. 8 Internal Security Act 1960 from 22 August 2001 to 21 August 2003.)

Held (dismissing the application):

[1] The application (for ***certiorari***) had become academic because the subject matter of the application, which was the 1st applicant, was no longer in Malaysia. It would serve no purpose for the court to further deliberate on the application. (The power to issue a **declaration** should be exercised with circumspection, with a proper sense of responsibility and ought not to be exercised unless the circumstances justify it. More importantly, before a Court makes a declaration there must be persons or a body as the proper or lawful recipient of the benefits of the declaration. The Court does not act in vain. Per Hashim Yeop Sani SCJ, *Mohd Noor Othman & Ors v. Hj Mohd Ismail Hj Ibrahim & Ors & Another Case* [1988] 1 CLJ (Rep) 224). (pp 647 f-g & 648 a-b)

Case(s) referred to:
Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd [2001] 4 CLJ 549 CA ***(refd)***
Mohd Noor Othman & Ors v. Hj Mohamed Ismail Hj Ibrahim & Ors [1988] 2 CLJ 597; [1988] 1 CLJ (Rep) 224 ***(foll)***

Legislation referred to:
Immigration Act 1959/63, ss. 8(3)(k), 14(4)(b)
Internal Security Act 1960, s. 8
Rules of the High Court 1980, O. 53

For the applicants - Edward Saw (Amer Hamzah Arshad, Edmund Bon & Choy Lai Yi with him); M/s Chooi & Co
For the respondents - Umi Kalthum Abdul Majid SFC

Reported by Gan Peng Chiang

JUDGMENT

Wan Afrah Ibrahim JC:

The Application
The applicants in this case are applying for an order of *certiorari* to quash the declarations made by the first respondent and second respondent on 18 August 2003 and 31 January 2003 respectively, which were as follows:

(i) that the first applicant is an undesirable immigrant under s. 8(3)(k) of the Immigration Act 1959/63; and

(ii) that the first applicant is a prohibited immigrant under s. 14(4)(b) Immigration Act 1959/63 and therefore the presence of the first applicant in Malaysia is unlawful.

The application is made pursuant to O. 53 Rules of the High Court 1980.

Background Facts

Briefly the facts of the case are as follows:

(i) The first applicant is a citizen of Indonesia and was a permanent resident of Malaysia since 1985.

(ii) The second applicant is the wife of the first applicant.

(iii) The first applicant was detained for two years under s. 8 of the Internal Security Act 1960 with effect from 22 August 2001.

(iv) On 30 January 2003, the second respondent issued a declaration pursuant to s. 8(3)(k) of the Immigration Act 1959/63 that the first applicant is an undesirable immigrant and therefore he was prohibited to remain in this country.

(v) On 18 August 2003, the first respondent made a declaration under s. 14(4)(b) Immigration Act 1959/63 that the first applicant is a prohibited Immigrant with effect from 16 August 2003 and therefore his presence in this country is unlawful.

It is upon the abovementioned declarations that the applicants filed this application for judicial review against the respondents. Leave has been granted by this court on 11 November 2003 for the two prayers of the aforesaid application.

On 14 May 2004, the first applicant was deported by the respondents. As a result of the action, senior federal counsel, Cik Umi Kalthum for the respondents, urged this court not to proceed with this matter as the subject matter namely the first applicant is no longer in the country and thus it now becomes academic.

The Issue

(a) The central issue now before this court is whether the declarations sought by the applicants will serve any purpose on the basis that the first applicant had already been deported by the Immigration Department, thereby causing this application for judicial review by the applicants, if granted, to become academic in nature.

(b) Counsel for the respondents explains the provisions in law of s. 8(3)(k) and 14(4)(b) of the Immigration Act 1959/63 which gives power to the first and second respondents to issue the aforesaid declarations dated 30 January 2003 and 18 August 2003 against the first applicant causing the latter to be deported. On such premise, the respondents find that the applicants' applications – no longer serve any purpose. In that context, counsel for the respondents submits that:

(i) the first applicant is no longer a lawful recipient of any benefit of the declarations he sought as he has no real interest in the declarations now; and

(ii) there is no longer a live issue between the parties which will only result in the declarations sought to become academic in nature.

(c) Counsel for the applicants in turn, submits that as this court had granted leave for the two prayers in the application, it thus follows that there are legal questions in respect of the decisions and actions made and taken by the respondents. These questions involve an interpretation of the relevant legislation as well as declarations made, in other words, whether the respondents acted within their powers under the legislation or *ultra vires* the same. In the same breath, counsel for the applicants submits that in the aforesaid issue presently, it does not deter the first applicant the right to continue with the intended proceedings for *certiorari.* This stemmed from the fact that, firstly, the applicants have the *locus standi* and are the lawful recipients of any benefit from any decision in these proceedings and, secondly, the issue whether the declarations of the first and second respondents were made legally and correctly is still alive.

Taking a step further, counsel for the applicants charged that the act by the respondents to deport the first applicant was a calculated effort laced with malice designed to engineer the present set of circumstances in reference to the aforesaid issue to escape from their obligations under the law in an attempt to move this court to strike out the proceedings without hearing the merits. Counsel for the applicants pointed out that the actions and submissions of the respondents border on being in contempt of this court. Reference is made to the case of *Jasa Keramat Sdn Bhd v. Monatech (M) Sdn Bhd* [2001] 4 CLJ 549 when the mareva application was pending, the same very assets sought to be injuncted were dealt with and transferred.

In summary, counsel for the applicants is of the view that this court should proceed to hear the substantive merits of the case despite the fact that the first applicant had been deported.

Findings

Reflecting on the central issue before me, the submissions made by both parties and the cases cited, it is my considered opinion that the applicants' application has now become academic since the subject matter of the application, that is, the first applicant is no longer in the country. Hence, it serves no purpose for this court to further deliberate on this application. I rely my findings as such, based on a case law in *Mohd Noor Othman & Ors v. Hj Mohamed Ismail Hj Ibrahim & Ors* [1988] 2 CLJ 597; [1988] 1 CLJ (Rep) 224 where the Supreme Court held:

> It is also an established principle consistently followed by our courts that the issuing of a declaration is discretionary. The power to issue a declaration should be exercised with circumspection with a proper sense of responsibility and ought not be exercised unless the circumstances justify it ... More importantly before a court makes a declaration there must be persons or a body as the proper or lawful recipient of the benefits of the declaration. The court does not act in vain.

Conclusion

As such, I dismiss the applicants' application with no order as to costs.